IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

MONDAY, THE 29TH OCTOBER 2007 / 7TH KARTHIKA 1929

Crl.Rev.Pet.No. 114 of 2000()

CRA.146/1994 of V ADDL.SESSIONS COURT, ERNAKULAM
CC.4/1991 of ADDL.CHIEF JUDICIAL MAGISTRATE, ERNAKULAM

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REVN. PETITIONER/ACCUSED IN C.C.4/1991 AND APPELLANT IN CRL.A.146/1994:

KUTTI ALI,S/O.KUNHI MOIDU,
KARUMBANACKAL HOUSE, VENNIYOOR (P.O.)
VIA. VALAKULAM, MALAPPURAM.

BY ADV. SRI.C.K.KOSHY

1ST RESPONDENT/COMPLAINANT IN C.C.4/1991 AND 1ST RESPONDENT IN CRL.A.146/1994/2ND RESPONDENT IN CRL.A.146/1994:

`.ASST.COLLECTOR OF CUSTOMS,PREVENTIVE DEPARTMENT, CUSTOMS HOUSE, COCHIN-9, REP. BY ADDITIONAL CENTRAL GOVT. STANDING COUNSEL.

2.STATE OF KERALA, REP. BY GOVT.PLEADER, HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI.K.V.SABU
SRI.P.PARAMESWARAN NAIR,ASGI.
PUBLIC PROSECUTOR SRI.K.C.SANTHOSH KUMAR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 29/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

J.B.KOSHY, J.

Criminal R.P.No.114 OF 2000 ()

Dated this the 29th day of October, 2007

O R D E R

Revision petitioner was convicted and sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.20,000/- under Section 135(1)(i) of the Customs Act. Set off was allowed for the period he spent in jail in connection with this case except the period under COFEPOSA (19.3.1990 to 24.3.1990 and 15.11.1990 to 10.6.1991). While granting stay of sentence, this Court directed to deposit the fine amount. According to the prosecution, on 18.3.1990, the Officers of the Cochin Customs House conducted inspection on the accused on suspicion that he is having contraband goods in his baggage. The person and baggage were subjected to a thorough search. Customs officers found 4 gold biscuits weighing 116.62 gms. each and 3 gold coins weighing 8 gms. each concealed inside his shoe of the left leg and 4 gold biscuits weighing 116.62 gms. each and 2 gold coins weighing

8 gms. each concealed inside his shoe of the right leg. The market value of the gold seized was Rs.3,31,920/-. The above gold biscuits and gold coins were seized and confiscated. He was also detained under the COFEPOSA for the offences punishable under Section 135(1)(i). He was sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.20,000/-. In Criminal appeal, appellate court reduced the sentence to one year imprisonment with a fine of Rs.20,000/-. The contention of the petitioner is that he has undergone customs formalities at Bombay and nothing was found from him. Therefore allegation of import of gold by concealment inside the shoes cannot be correct. It is further stated that witnesses in whose presence search of the petitioner was made turned hostile and statement obtained from him by the Customs Officers was under coercion. But according to the tribunal, gold was recovered from the accused and he has no explanation regarding the gold concealed in his shoes. It was also later confiscated. It is settled law that unlike a statement given before the Police Officers, there is no bar in the admissibility of confession given before the Customs officers.

There is no ground for interfering in the conviction entered. However, I notice that the entire gold seized was confiscated by the Government. Apart from the punishment in the criminal case, he had also undergone imprisonment under the COFEPOSA. He is in jail for more than 7 months for these offences and a fine of Rs.20,000/- was also ordered to be paid for suspending the sentence. Considering these facts, I am of the view that imprisonment can be altered to 7 months imprisonment apart from the Rs.20,000/- ordered as fine. He is entitled to set off the imprisonment he has undergone except for the period he was in prison under COFEPOSA. Altering the sentence and confirming the conviction, this revision petition is disposed of.

J.B.KOSHY, JUDGE

prp

J.B.KOSHY

Criminal.R.P.114 OF 2000

O R D E R

29th October, 2007